

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6045 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
5. Whether it is to be circulated to the Civil Judge?No :

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NATIONAL INSURANCE CO.LTD.

Versus

SUNIL S AHUJA

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Appearance:

MS MEGHA JANI for Petitioner

MR MTM HAKIM for Respondent No. 1, 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. This Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923. Ms. Megha Jani, learned Counsel for the appellant has been heard on admission of this Appeal. Admission of Appeal has been opposed by Shri M.T.M. Hakim for the respondent.

2. We have gone through the impugned Judgment of the Commissioner under the Workmen's Compensation Act. The contention of Ms.Megha Jani is that the medical certificate shows that the victim received 30 % disability on his right leg and disability with respect to whole body was only 15 %. As against this medical evidence the Commissioner has imported his personal knowledge and held that 50 % disability to the workman will meet the ends of justice if the compensation is awarded on that line.

3. The proviso to Section 30(1) of the Workmen's Compensation Act provides that no Appeal shall lie against any order unless substantial question of law is involved in Appeal. Nothing has been argued as to what is substantial question of law involved in this Appeal. Even if the contention of learned Counsel for the appellant is stretched to this extent that the finding of the Commissioner is beyond the evidence on record hence the substantial question of law is involved it has to be seen whether the observation of the Commissioner, is actually against the medical evidence which can be said to be substantive and reliable evidence on record. Needless to say that medical opinion is nothing, but opinion evidence and not substantive evidence. We have gone through the statement of Dr.Maheshkumar Patel, who had issued disability certificate. In his statement he has deposed that the victim was a tempo driver and he received 30 % permanent disability on his right leg. He further stated that the movement of ankle joint was Zero Degree. He proceeded to state further that the victim can not do the work of driver as he was performing earlier. This statement shows that it was nothing but opinion of the doctor and that he had not certified that the victim could not at all drive the tempo. On the other hand he stated that the victim can not do the work as driver as he was doing earlier. Regarding authenticity of disability Certificate the doctor has stated that "I had issued Certificate to him which he has given and has issued on the basis of the book of the case papers." Thus, last sentence in the cross examination in Para : 3 of this witness clearly reveals that the opinion cannot be said to be reliable. It was not based on clinical examination rather the certificate was issued on the strength of the book of the case papers. The Commissioner on the other hand had seen the victim and has observed that the victim was complaining of pain of ankle joint of right leg even at the time when he entered witness box before the Commissioner. The Commissioner further found that the victim could not lift more weight. These facts were considered by the Commissioner and as

such he awarded compensation treating 50 % disability of the workman. This finding cannot be said to be conjectural or perverse. The driver whose ankle movement was found to be zero degree and whose permanent disability on the right leg was considered by the doctor to be 30 % it can safely be said that his work as driver is greatly hampered.

Consequently no substantial question of law is involved in this Appeal. The Appeal is, therefore, dismissed summarily with no order as to costs.

sd/-

( D. C. Srivastava, J. )

Date : August 07, 2000 sd/-

( H. K. Rathod, J. )

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